

REMARKS

In the Office Action dated January 22, 2009, claims 20-37 were rejected under Section 112, first paragraph as failing to comply with the enablement requirement because the Examiner stated the specification does not appear to describe how to automatically estimate a level of ECG activity in the raw signal, how to automatically electronically estimate a level of EMG activity in the raw signal, and how to automatically electronically determine a weighting factor for a channel depending on the signal-to-noise ratio of that channel. Claims 20-37 also were rejected under Section 112, first paragraph as failing to comply with the written description requirement, for the same reasons.

Applicants respectfully submit that the features identified by the Examiner can be accomplished in many different ways, which are well known to those of ordinary skill in the field of signal processing in general, and analysis of ECG signals and EMG signals in particular. The present specification, moreover, identifies a number of documents that describe how these different features can be accomplished. Many other documents are available that provide evidence that these features can be easily accomplished by those of ordinary skill in the relevant technology. Using solely the documents cited during examination of the PCT application as examples, United States Patent No. 5,671,752 provides relevant information at column 1, lines 9-11 and column 4, lines 25-27; United States Patent No. 5,820,560 provides relevant information at column 1, lines 11-13 and column 5, lines 4-5; WO 98/48877 provides relevant information at page 1, lines 11-13; United States Patent No. 4,248,240 provides relevant information at column 1, lines 15-17; WO 01/03579 provides relevant information at page 1, lines 23-29 and page 4, lines 25-27; WO

99/43374 provides relevant information at page 5, lines 4-6. Additionally, details regarding the estimation of ECG activity are provided in the PCT Publication of the present application at page 8, lines 14-25 and page 9, lines 9-16. Techniques for estimating the EMG activity are described in the PCT Publication at page 8, lines 27 through page 9, line 4 and at page 9, lines 18-25.

The PCT Publication describes a suitable technique for automatically electronically determining a weighting factor for a channel depending on the signal-to-noise ratio of that channel at page 10. At page 10, lines 1-14 it is clearly described how the signal-to-noise ratio can be determined once S (the ECG activity) and R (the EMG activity) are determined. At page 10, lines 16-27 it is clearly described how the weighting factor can be determined based on the signal-to-noise ratio.

The Examiner has not identified any additional information that the Examiner believes would be needed by a person of ordinary skill in the relevant technology in order to make and use the features. The Examiner has simply made a general statement that these features allegedly are not enabled, or are not described in compliance with the written description requirement.

If the Examiner can identify any additional information that the Examiner believes would be needed by a person of ordinary skill to make and use the claimed subject matter, which the Examiner believes is not described in the present specification, the Examiner is invited to identify such allegedly lacking information with more specificity, and Applicants will respond thereto. In view of the extensive discussion of the present specification, and in view of the expensive details that are

provided in the prior art of record, Applicants believe the present specification is in full compliance with all provisions of Section 112, first paragraph.

Claims 26-37 were rejected under Section 112, second paragraph as being indefinite for several reasons.

The Examiner stated in claims 26-31 it is unclear if the analysis unit is hardware or software, and the Examiner stated that if the analysis unit is software, the device claims do not contain any structural limitations.

In response, independent claim 26 has been amended to describe the device as being programmed to implement the claimed functions. A programmed device is clearly hardware, and thus constitutes a sufficient structural limitation to be in compliance with Section 112, second paragraph.

Additionally, in claims 26-31 the Examiner stated it is unclear whether the last seven lines of claim 26 are limitations regarding the analysis unit, each of the channels, or another aspect of the device. Claim 26 has been amended to clarify this point.

Claims 32-37 were stated to be indefinite because they do not include a transitional phrase. Applicants are unaware of any statutory requirement that a patent claim must contain a transitional phrase, and in fact the MPEP Section cited by the Examiner (MPEP Section 2111.03) approves the use of simple words such as "having" in a patent claim. Nevertheless, independent claim 32 has been amended to refer to the computer program as "comprising" programming instructions, and those programming instructions are stated to cause a computer to implement the features of claim 32.

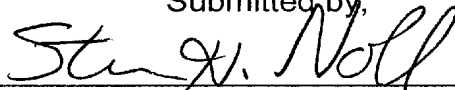
Claims 26-37 are therefore submitted to be in full compliance with all provisions of Section 112, second paragraph.

Claims 20-25 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. In response, those claims have been amended to employ language consistent with the requirements delineated by the United States Court of Appeals for the Federal Circuit in the recently-decided *In re Bilski* decision. For the reasons stated in *In re Bilski*, those claims are submitted to constitute statutory subject matter under 35 U.S.C. §101.

Claims 20-37 were stated to be allowable if rewritten to overcome the rejections under Section 112 and Section 101. Since Applicants submit these rejections have now been overcome, all claims of the application are submitted to be in condition for allowance. Early reconsideration of the application is therefore respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required, or to credit any overpayment to account No. 501519.

Submitted by,



(Reg. 28,982)

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